AB-1716 Hazardous wastes and materials: certified unified program agencies. (2023-2024)

Date Published: 09/22/2023 09:00 PM

Assembly Bill No. 1716

CHAPTER 207

An act to amend Sections 25143.9, 25143.10, 25201.16, 25270.4.5, 25270.6, 25270.12.1, 25281.5, 25281.6, 25284.1, 25404.1.1, 25505, 25507, 25534, and 25536 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 22, 2023. Filed with Secretary of State September 22, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1716, Committee on Environmental Safety and Toxic Materials. Hazardous wastes and materials: certified unified program agencies.

(1) Existing law, as part of the hazardous waste control laws, requires any waste identified by the Department of Toxic Substances Control as hazardous or extremely hazardous to be managed in accordance with permits, orders, and regulations issued or adopted by the department. Existing law authorizes the department to grant a variance from these requirements for certain wastes, including recyclable materials, as defined, under specified conditions. Existing law provides that a recyclable material shall be excluded from classification by the department as a waste only if the recyclable material is held in a container or tank that is labeled, marked, and placarded in accordance with department requirements, the owner or operator of the business location where the recyclable material is located has a business plan, as specified, and the recyclable material is stored and handled in accordance with all local ordinances and codes.

This bill would revise the requirements for the exclusion of a recyclable material from classification by the department as a waste by requiring, among other things, that the material be held in a container, tank, containment building, or waste pile that is labeled, marked, and placarded in accordance with the department's hazardous waste labeling, marking, and placarding requirements applicable to generators, as provided. The bill would also require that the material be managed in accordance with specified regulations.

Existing law requires a person who recycles more than 100 kilograms per month of recyclable material under a claim that the material qualifies for exclusion or exemption to provide specified information in writing every 2 years to the local officer or agency authorized to enforce those provisions. Existing law also authorizes the local officer or agency to exempt a person who operates an antifreeze recycling unit or solvent distillation unit, as specified, from that requirement or to require less information from that person than existing law requires pursuant to that provision.

The bill would require a person who generates more than 100 kilograms of a material in any month under the claim that the material qualifies for exemption or exclusion as a recyclable material to submit, in the first month that more than 100 kilograms of the material is generated, specified information to the statewide information management system, as provided. The bill would require a person who is not the generator, and who accumulates, manages, or recycles the recyclable material identified by the generator as exempt or excluded, to submit the information to that system. The bill would also require these persons to submit the information to the system within 60 days of the date when the generation, accumulation, management, or recycling of the material is permanently discontinued. The bill would require a person who generates, accumulates, manages, or recycles more

than 100 kilograms of recyclable material in any month to resubmit the required information, as described, by July 1 of each even-numbered year. The bill would eliminate the authority of the local officer or agency to exempt a person who operates an antifreeze recycling unit or solvent distillation unit from some or all of these information requirements.

A violation of the hazardous waste control laws is a crime. By expanding the scope of crimes, the bill would impose a state-mandated local program.

(2) Existing law regulates the disposal of hazardous waste aerosol cans. Existing law defines an “aerosol can” to mean a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam. Among other things, existing law requires that a container used to accumulate or transport universal waste aerosol cans, or the contents removed from a universal waste aerosol can or processing device, unless the contents have been determined to not be hazardous waste, to be, among other things, closed, structurally sound, and compatible with the contents of the universal waste aerosol can, and show no evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. Existing law authorizes a universal waste handler to process a universal waste aerosol can to remove and collect the contents of the universal waste aerosol can if the handler meets certain requirements, including that the handler ensures that the processing operations are performed safely by developing and implementing a written operating procedure detailing the safe processing of universal waste aerosol cans.

This bill would revise the definition of an aerosol can to refer to a nonrefillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. The bill would require the container used to accumulate or transport universal waste aerosol cans or the contents removed from a universal waste aerosol can or processing device to additionally be protected from sources of heat. The bill would also require universal waste aerosol cans that show evidence of leakage be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained, as specified. The bill would revise and expand the duties of a universal waste handler by requiring the written procedure to be maintained onsite at all times and the handler to maintain a copy of the manufacturer’s specifications and instructions for the device used to puncture and drain the aerosol cans. The bill would additionally require the procedure to include protocols to minimize, mitigate, prevent, control and clean up any unauthorized release, and would require the handler to recycle the empty punctured aerosol cans, as described.

Because the bill would expand the scope of existing crimes and impose a higher level of service on local public officers, the bill would impose a state-mandated local program.

(3) The Aboveground Petroleum Storage Act generally regulates aboveground storage tanks that contain petroleum and that meet certain requirements.

This bill would add specification regarding certain terms and would make a nonsubstantive change in the language of the act.

(4) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program, known as the unified program. Existing law requires every county to apply to the secretary to be certified to implement the unified program, and authorizes a city or local agency that meets specified requirements to apply to the secretary to be certified to implement the unified program, as a certified unified program agency, or CUPA. Existing law defines “unified program agency,” or UPA, to mean the CUPA or its participating agencies, as provided.

Existing law authorizes a unified program agency to issue an administrative order requiring that a violation of any law, regulation, permit, information request, order, variance, or other requirement that a unified program agency is authorized to enforce or implement be corrected and imposing various administrative penalties for certain types of violations. Existing law prescribes the procedures applicable to this process, including an appeal by a unified program facility of the issuance of an administrative order. Existing law authorizes a UPA to suspend or revoke the permit, or an element of a permit, of a unified program facility for not paying the fee or a fine or penalty associated with the permit in accordance with specified procedures. Existing law requires the unified program facility, in the event of suspension or revocation, to immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.

This bill would specify that a person who violates the unified program laws shall be liable for a civil or administrative penalty of not more than $5,000 for each day on which the violation continues. The bill would authorize a unified program agency, in addition to suspending or revoking a permit or permit element, to withhold a permit or permit element if a unified program facility fails to pay a permit fee or a fine or penalty in accordance with specified procedures, or fails to comply with an administrative order issued by a unified program agency. The bill would additionally require a unified program facility that does not have a valid permit or permit element to immediately discontinue operating that facility or function of the facility to which the permit element applies until the unified program agency issues, reinstates, or reissues the permit. By making changes to provisions enforced by unified program agencies, the bill would impose a state-mandated local program.

(5) Existing law requires a unified program agency, for any stationary source with one or more covered processes, as defined, to make a preliminary determination as to whether there is a significant likelihood that the use of regulated substances by a stationary source may pose a regulated substances accident risk.

If the unified program agency determines that there is a significant likelihood of a regulated substances accident risk, as provided, it must require the stationary source to prepare and submit a risk management plan, or it may reclassify the covered process. If the unified program agency determines that there is not a significant likelihood of a regulated substances accident risk, existing law authorizes it to require the stationary source to prepare and submit a risk management plan, but provides that it need not impose that requirement if it determines that the likelihood of a regulated substances accident risk is remote, unless otherwise required by federal law, or, in the alternative, authorizes it to reclassify the covered process.

This bill would authorize a unified program agency to make a determination, rather than require it to make a preliminary determination, as to whether there is a significant likelihood that the use of a regulated substance by a stationary source may pose a regulated substances accident risk. The bill would require, if a unified program agency determines that there is a significant likelihood of a regulated substances accident risk and reclassifies a covered process to a higher program level, a stationary source to comply with the requirements applicable to the higher level program within 12 months of reclassification. The bill would, if the unified program agency determines that there is not a significant likelihood of a regulated substances accident risk, authorize the unified program to exempt a stationary source from certain requirements. The bill would authorize a unified program agency to revoke the exemption, as provided, and would require, in that event, a unified program facility to comply with specified requirements.

Existing law requires a stationary source that is required by a unified program agency to prepare and submit a risk management plan to submit the plan in accordance with the schedule established by the unified program agency, and prohibits a unified program agency from requiring the risk management plan to be submitted except within a certain period. Existing law provides that a knowing violation of these requirements after reasonable notice of the violation is a crime.

This bill would instead require a stationary source to submit a risk management plan to the unified program agency before the date on which the regulated substance is first present in a process above a listed threshold quantity.

By expanding the scope of a crime, and by making changes to provisions enforced by unified program agencies, the bill would impose a state-mandated program.

(6) Existing law declares that, in order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. Existing law requires a business to establish and implement a business plan, containing certain elements, for emergency response to a release or threatened release of a hazardous material if the business meets specified conditions at any unified program facility, including that the business handles a hazardous material or a mixture containing a hazardous material in a quantity at any one time during the reporting year that exceeds specified thresholds. Existing law exempts from this requirement certain hazardous materials, including propane that is for on-premises use or storage, as specified.

This bill would revise the scope of the requirement, including by adding to the list of hazardous materials exempt from the requirement a liquid or gaseous fuel in fuel tanks on vehicles or motorized equipment, if the fuel tank is integral to the operation of the vehicle or motorized equipment, and treated wood and treated wood waste, as specified. The bill would also revise the content requirements for business plans by requiring some of the elements of a business plan to be included on the site map only if they are present on the site.

By making changes to provisions enforced by unified program agencies, the bill would impose a state-mandated local program.

(7) Existing law defines, for purposes of laws related to the underground storage of hazardous substances, an “emergency generator tank system” as an underground storage tank system that provides power supply in the event of a commercial power failure, stores diesel fuel or kerosene, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined.

This bill would recast the defined term as “emergency tank system,” redefine the term to mean an underground storage tank system that stores diesel fuel or kerosene solely for use by one or more stationary emergency devices, and add to the emergency devices already covered certain fire suppression systems and steam generation pressure tanks.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.
Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25143.9 of the Health and Safety Code is amended to read:

25143.9. A recyclable material shall not be excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2, unless all of the following requirements are met:

(a) The material is held in a container, tank, containment building, or waste pile that is labeled, marked, and placarded in accordance with the department's hazardous waste labeling, marking, and placarding requirements applicable to generators, except that the container, tank, or containment building shall be labeled or marked clearly with the words "Excluded Recyclable Material," instead of the words "Hazardous Waste," and manifest document numbers are not applicable. If labeling or marking the waste pile is not practicable, the required labeling or marking shall be posted on signage displayed at the location where the material is stored. If the material is used oil, the containers, aboveground tanks, and fill pipes used to transfer oil into underground storage tanks shall also be labeled or clearly marked with the words "Used Oil."

(b) The material is addressed in a business plan that meets the requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 for the location at which the material is generated, accumulated, or otherwise managed. If the quantity of the material is not enough to otherwise require a business plan, the business shall ensure that an emergency plan that meets the department's emergency response and contingency requirements applicable to generators of hazardous waste is available at the site.

(c) The material is managed in accordance with paragraphs (1) and (2), provided that the most stringent or broadest-in-scope requirements are met:

(1) The material is stored and handled in accordance with all local ordinances and codes, including, but not limited to, codes requiring secondary containment for hazardous materials storage and fire codes (for example, the California Fire Code found in Part 9 of Title 24 of the California Code of Regulations), governing the storage and handling of the hazardous material.

(2) The material is managed in accordance with the department's interim status requirements applicable to generators in Chapter 12 (commencing with Section 66262.10) and Chapter 15 (commencing with Section 66265.1) of Division 4.5 of Title 22 of the California Code of Regulations, or any successor regulations, and as follows:

(A) For containers, in accordance with Article 9 (commencing with Section 66265.170) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations.

(B) For tank systems, in accordance with Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Sections 66265.191, 66265.192, and 66265.196, subdivision (c) of Section 66265.197, and Section 66265.200.

(C) For waste piles, in accordance with Article 12 (commencing with Section 66265.250) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations.

(D) For containment buildings, in accordance with Article 29 (commencing with Section 66265.1100) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations.

(d) If the material is being exported to a foreign country, the person exporting the material shall meet the requirements of Section 25162.1.

SEC. 2. Section 25143.10 of the Health and Safety Code is amended to read:

25143.10. (a) Except as provided in subdivision (h), any person who generates more than 100 kilograms of a material in any month under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 shall, in the first month that more than 100 kilograms of the material is generated, submit all of the following information, using the format established pursuant to subdivision (g), to the statewide information management system:

(1) The name, site address, mailing address, and telephone number of the owner or operator of any facility that accumulates, manages, or recycles the material.

(2) The name and address of the generator of the recyclable material.

(3) Documentation that the requirements of any exemptions or exclusions pursuant to Section 25143.2 are met, including, but not limited to, all of the following:

(A) If a person who accumulates, manages, or recycles the material is not the same person who generated the recyclable material, documentation that there is a known market for disposition of the recyclable material and any products manufactured from the recyclable material.

(B) If the basis for the exclusion is that the recyclable material is used or reused to make a product, or as a safe and effective substitute for a commercial product, a general description of the material and products, identification of the constituents or group of constituents, and their approximate concentrations, that would render the material or product hazardous under the regulations adopted pursuant to Sections 25140 and 25141, if it were a waste, and the means by which the material is beneficially used.

(b) Any person, other than the generator, who accumulates, manages, or recycles the recyclable material identified by the generator pursuant to subdivision (a) shall submit the information required by subdivision (a) using the format established pursuant to subdivision (g) to the statewide information management system.

(c) Any person required to submit the information under subdivision (a) or (b) shall submit to the statewide information management system the information required in subdivision (a) within 60 days of the date when the generation, accumulation, management, or recycling of the material is permanently discontinued.

(d) A person who generates, accumulates, manages, or recycles more than 100 kilograms of recyclable material in any month shall resubmit to the statewide information management system the information required in subdivisions (a) and (b) by July 1 of each even-numbered year, and shall cover all recyclable material generation, accumulation, management, and recycling activities from January 1 of the prior even-numbered year to December 31, inclusive, of the previous year.

(e) Except as provided in Section 25404.5, the governing body of a city or county may adopt an ordinance or resolution pursuant to Section 101325 to pay for the actual expenses of the activities carried out by local officers or agencies pursuant to subdivision (a).

(f) If a person who accumulates, manages, or recycles material under a generator's claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 is not the same person who generated the recyclable material, the person who generates the material shall obtain from persons who accumulate, manage, or recycle the material any information necessary to submit a report pursuant to subdivisions (a) and (b).

(g) A person providing to the statewide information management system the information required by subdivisions (a), (b), and (c) shall use a format developed by the unified program agencies in consultation with the department. The format shall be provided to all users via the statewide information management system and shall include, at a minimum, all pertinent data defined in the Data Dictionary for Regulated Activities in Subdivision 1 (commencing with Section 1) of Division 3 of Title 27 of the California Code of Regulations.

(h) A recyclable material generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste treatment manufacturing unit is not subject to the requirements of this section until the recyclable material exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the material remains in the unit for more than 90 days after the unit ceases to be operated for manufacturing, storage, or transportation of the product or raw material.

SEC. 3. Section 25201.16 of the Health and Safety Code is amended to read:

25201.16. (a) For purposes of this section, the following terms have the following meanings:

(1) "Aerosol can" means a nonrefillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

(2) "Aerosol can processing" means the puncturing, draining, or crushing of aerosol cans.

(3) "Destination facility," as used in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, also includes a facility that treats, except as described in subdivision (d), or disposes of, a hazardous waste aerosol can that is shipped to the facility as a universal waste aerosol can, except destination facility does not include a facility at which universal waste aerosol cans are merely accumulated.

(4) "Hazardous waste aerosol can" means an aerosol can that meets the definition of hazardous waste, as defined in Section 25117.

(5) "Unauthorized release" means a release to the environment that is in violation of any applicable federal, state, or local law, or any permit or other approval document issued by any federal, state, or local agency.

(6) “Universal waste aerosol can” means a hazardous waste aerosol can while it is being managed in accordance with the department’s regulations governing the management of universal waste, except as required otherwise in subdivisions (d) to (k), inclusive. Upon receipt of a universal waste aerosol can by a destination facility for purposes of treatment or disposal, the can is no longer a universal waste aerosol can, but continues to be a hazardous waste aerosol can.

(7) With respect to a universal waste aerosol can, the term “universal waste handler,” as defined in Section 66273.9 of Title 22 of the California Code of Regulations, does not include either of the following:

(A) A person who treats, except as described in subdivision (h), or disposes of hazardous waste aerosol cans including universal waste aerosol cans.

(B) A person engaged in offsite transportation of hazardous waste aerosol cans, including, but not limited to, universal waste aerosol cans, by air, rail, highway, or water, including a universal waste aerosol can transfer facility.

(b) (1) The requirements of this section apply to any person who manages aerosol cans, except for the following:

(A) Aerosol cans that are not yet wastes pursuant to Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(B) Aerosol cans that do not exhibit a characteristic of a hazardous waste as set forth in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(C) Aerosol cans that are empty pursuant to subsection (m) of Section 66261.7 of Title 22 of the California Code of Regulations.

(2) (A) An aerosol can becomes a waste on the date the aerosol can is discarded or is no longer useable. An aerosol can is deemed to be no longer useable when any of the following occurs:

(i) The can is as empty as possible, using standard practices.

(ii) The spray mechanism no longer operates as designed.

(iii) The propellant is spent.

(iv) The product is no longer used.

(B) An unused aerosol can is a waste, for purposes of Section 25124, on the date the owner decides to discard it.

(c) (1) The disposal of any hazardous waste aerosol can is subject to the requirements of this chapter, and to any regulations adopted by the department relating to the disposal of hazardous waste.

(2) Except as otherwise provided in this section, the treatment or storage of any hazardous waste aerosol can is subject to the requirements of this chapter, and any regulations adopted by the department relating to the treatment and storage of hazardous waste.

(d) (1) Except as provided in paragraph (2), a universal waste aerosol can is deemed to be a universal waste for purposes of the department’s regulations governing the management of universal wastes.

(2) The exemptions described in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations for universal waste generated by households and conditionally exempt small quantity waste generators of universal waste do not apply to universal waste aerosol cans.

(e) A universal waste handler shall manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(f) A container used to accumulate or transport universal waste aerosol cans, or the contents removed from a universal waste aerosol can or processing device, unless the contents have been determined to not be hazardous waste, shall meet all of the following requirements:

(1) (A) Except when waste is added or removed or as provided in subparagraph (B), the container shall be closed, structurally sound, and compatible with the contents of the universal waste aerosol can, shall show no evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be protected from sources of heat.

(B) The closed container requirement in subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h), or prior to shipping the cans offsite, except that the container shall be covered at the end of each workday.

(2) The container shall be placed in a location that has sufficient ventilation to avoid formation of an explosive atmosphere, and shall be designed, built, and maintained to withstand pressures reasonably expected during storage and transportation.

(3) (A) The container shall be placed on or above a floor or other surface that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(B) Subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h) or prior to shipping the cans offsite.

(4) Incompatible materials shall be kept segregated and managed appropriately in separate containers.

(5) A container holding flammable wastes shall be kept at a safe distance from heat and open flames.

(6) A container used to hold universal waste aerosol cans shall be labeled or marked clearly with one of the following phrases: “Universal Waste-Aerosol Cans,” “Waste Aerosol Cans,” or “Used Aerosol Cans.”

(7) Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of subdivision (h).

(g) A universal waste handler shall accumulate universal waste aerosol cans in accumulation containers that meet the requirements of subdivision (f), as long as each individual aerosol can is not breached and remains intact. The universal waste aerosol cans shall be accumulated in a manner that is sorted by type and compatibility of contents.

(h) A universal waste handler may process a universal waste aerosol can to remove and collect the contents of the universal waste aerosol can, if the universal waste handler meets all of the following requirements:

(1) The handler is not an offsite commercial processor of aerosol cans. For the purposes of this paragraph, a household hazardous waste collection facility, as defined in subdivision (e) of Section 25218.1, is not an offsite commercial processor.

(2) The handler ensures that the universal waste aerosol can is processed in a manner and in equipment designed, maintained, and operated so as to prevent fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(3) The handler ensures that the unit used to process the universal waste aerosol cans is placed on or above a nonearthen floor that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(4) The handler ensures that the processing operations are performed safely by developing and implementing a written operating procedure detailing the safe processing of universal waste aerosol cans. This written procedure shall be maintained onsite at all times and the handler shall maintain a copy of the manufacturer’s specifications and instructions for the device used to puncture and drain the aerosol cans. The procedure shall, at a minimum, include all of the following:

(A) The type of equipment to be used to process the universal waste aerosol cans safely.

(B) Operation and maintenance of the unit.

(C) Segregation of incompatible wastes.

(D) Proper waste management practices, including ensuring that flammable wastes are stored away from heat and open flames.

(E) Waste characterization.

(F) Protocols to minimize, mitigate, prevent, control, and clean up any unauthorized release, including any spill or leak.

(5) The handler ensures that a spill cleanup kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can.

(6) The handler immediately transfers the contents of the universal waste aerosol can or processing device, if applicable, to a container that meets the requirements of subdivision (f), and characterizes and manages the contents pursuant to subdivision (i).

(7) The handler ensures that the area in which the universal waste aerosol cans are processed is well ventilated.

(8) The handler ensures, through a training program utilizing the written operating procedures developed pursuant to paragraph (4), that each employee is thoroughly familiar with the procedure for sorting and processing universal waste aerosol cans, and

proper waste handling and emergency procedures relevant to the handler's responsibilities during normal facility operations and emergencies.

(9) The handler shall recycle the empty punctured aerosol cans, pursuant to subdivision (m) of Section 66261.7 of Title 22 of the California Code of Regulations.

(i) A universal waste handler who processes universal waste aerosol cans to remove the contents of the aerosol can, or who generates other waste as a result of the processing of aerosol cans, shall determine whether the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste identified in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(1) If the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste, those wastes shall be managed in compliance with all applicable requirements of this chapter and the regulations adopted by the department pursuant to this chapter. The universal waste handler shall be deemed the generator of that hazardous waste and is subject to the requirements of Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) If the contents of the universal waste aerosol can, residues, or other wastes are not hazardous, the universal waste handler shall manage those wastes in a manner that is in compliance with all applicable federal, state, and local requirements.

(j) (1) A universal waste handler that processes universal waste aerosol cans shall, no later than the date on which the handler first initiates this activity, submit a notification, in person or by certified mail, with return receipt requested, to either of the following:

(A) The Certified Unified Program Agency (CUPA) as defined in subdivision (b) of Section 25123.7, if the facility is under the jurisdiction of a CUPA.

(B) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the handler.

(B) A description of the universal waste aerosol can processing activities, including the type and estimated volumes or quantities of universal waste aerosol cans to be processed monthly, the treatment process or processes, equipment descriptions, and design capacities.

(C) A description of the characteristics and management of any hazardous treatment residuals.

(3) (A) Within 30 days of any change in operation that necessitates modifying any of the information submitted in the notification required pursuant to this subdivision, the handler shall submit an amended notification, in person or by certified mail, with return receipt requested, to one of the following:

(i) The CUPA, if the facility is under the jurisdiction of a CUPA.

(ii) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(k) In addition to the requirements set forth in Article 5 (commencing with Section 66273.50) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations, during transportation, including holding time at a transfer facility, a transporter of universal waste aerosol cans shall comply with the following requirements:

(1) The transporter shall transport and otherwise manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste, or component of a universal waste, into the environment.

(2) Universal waste aerosol cans shall be transported and stored in accumulation containers that are clearly marked or labeled for that use and that meet the requirements of subdivision (f).

(l) The department may adopt regulations specifying any additional requirement or limitation on the management of hazardous waste aerosol cans that the department determines is necessary to protect human health or safety or the environment.

(m) The development and publication of the notification form specified in subdivision (j) is not subject to the requirements described in Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code.

(n) In addition to the requirements set forth in this section, a hazardous waste aerosol can shall be managed in a manner that meets all requirements established by the United States Environmental Protection Agency.

SEC. 4. Section 25270.4.5 of the Health and Safety Code is amended to read:

25270.4.5. (a) Except as provided in subdivision (b), the owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan applying good engineering practices to prevent petroleum releases using the same format required by Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, including owners and operators of tank facilities not subject to the general provisions in Section 112.1 of those regulations. An owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to ensure compliance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, an owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A tank facility located on and operated by a farm, nursery, logging site, or construction site is not subject to subdivision (a) if no storage tank at the location exceeds 20,000 gallons of petroleum and the cumulative petroleum storage capacity of the tank facility does not exceed 100,000 gallons. Unless excluded from the definition of an “aboveground storage tank” in Section 25270.2, the owner or operator of a tank facility exempt pursuant to this subdivision shall take the following actions:

(1) Conduct a daily visual inspection of any storage tank storing petroleum. For purposes of this section, “daily” means every day that contents are added to or withdrawn from the tank, but no less than five days per week. The number of days may be reduced by the number of state or federal holidays that occur during the week if there is no addition to, or withdrawal from, the tank on the holiday. The UPA may reduce the frequency of inspections to not less than once every three days at a tank facility that is exempt pursuant to this section if the tank facility is not staffed on a regular basis, provided that the inspection is performed every day the facility is staffed.

(2) Allow the UPA to conduct a periodic inspection of the tank facility.

(3) If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.

(c) The owner or operator of a tank in an underground area that is subject to this chapter pursuant to subdivision (c) of Section 25270.3 may use the format adopted by the office to prepare a spill prevention control and countermeasure plan as specified in subdivision (a).

SEC. 5. Section 25270.6 of the Health and Safety Code is amended to read:

25270.6. (a) (1) On or before January 1, annually, each owner or operator of a tank facility subject to this chapter shall file with the statewide information management system, a tank facility statement that shall identify the name and address of the tank facility, a contact person for the tank facility, the total petroleum storage capacity of the tank facility, and the location and contents of each petroleum storage tank that exceeds 10,000 gallons in storage capacity. A copy of a statement submitted previously pursuant to this section may be submitted in lieu of a new tank facility statement if no new or used storage tanks have been added to the facility or if no significant modifications have been made. For purposes of this section, a significant modification includes, but is not limited to, altering existing storage tanks or changing spill prevention or containment methods.

(2) Notwithstanding paragraph (1), an owner or operator of a tank facility that submits a business plan, as defined in subdivision (d) of Section 25501, to the statewide information management system and that complies with Sections 25503, 25505, 25505.1, 25507, 25507.2, 25508, 25508.1, and 25508.2, satisfies the requirement in paragraph (1) to file a tank facility statement.

(b) Each owner or operator of a tank facility who is subject to the requirements of subdivision (a) shall annually pay a fee to the UPA, on or before a date specified by the UPA. The governing body of the UPA shall establish a fee, as part of the single fee

system implemented pursuant to Section 25404.5, at a level sufficient to pay the necessary and reasonable costs incurred by the UPA in administering this chapter, including, but not limited to, inspections, enforcement, and administrative costs. The UPA shall also implement the fee accountability program established pursuant to subdivision (c) of Section 25404.5 and the regulations adopted to implement that program.

SEC. 6. Section 25270.12.1 of the Health and Safety Code is amended to read:

25270.12.1. (a) Any owner or operator of a tank facility who fails to prepare a spill prevention control and countermeasure plan in compliance with subdivision (a) of Section 25270.4.5, to file a tank facility statement pursuant to subdivision (a) of Section 25270.6, to submit the fee required by subdivision (b) of Section 25270.6, or to report spills as required by Section 25270.8, or who otherwise fails to comply with the requirements of this chapter is liable to the UPA for an administrative penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the owner or operator commits a second or subsequent violation, an administrative penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) The administrative penalties assessed by a UPA shall be deposited into a unified program account established by the UPA for the purpose of carrying out the functions of the unified program.

(c) When a UPA issues an enforcement order or assesses an administrative penalty, or both, for a violation of this chapter, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.

(d) The administrative penalties specified in this section are in addition to any other penalties provided by law, except for a violation for which a civil penalty under Section 25270.12 has already been imposed for the same violation.

SEC. 7. Section 25281.5 of the Health and Safety Code is amended to read:

25281.5. (a) Notwithstanding subdivision (m) of Section 25281, for purposes of this chapter, “pipe” means all parts of a pipeline, or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to Part 195 (commencing with Section 195.0) of Subchapter D of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations.

(2) An intrastate pipeline subject to the Elder California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code).

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles that are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (y) of Section 25281, “underground storage tank” does not include any of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

(3) Unburied fuel piping connected to an emergency tank system, if the owner or operator conducts a visual inspection of the piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel supply and return piping connected to emergency tank systems.

(c) For purposes of this chapter, “emergency tank system” means an underground storage tank system that stores diesel fuel or kerosene solely for use by one or more of the following stationary emergency devices:

(1) An emergency generator that provides power supply in the event of a commercial power failure or disruption, a legally required standby system, or an optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical

Code of the National Fire Protection Association (NFPA).

(2) A fire suppression system used to extinguish, control, or prevent spreading of fires, as defined in the California Fire Code and in NFPA 17A: Standard for Wet Chemical Extinguishing Systems.

(3) A steam generation pressure tank, as defined in NFPA 85: Boiler and Combustion Systems Hazards Code.

SEC. 8. Section 25281.6 of the Health and Safety Code is amended to read:

25281.6. (a) A tank located in a below-grade structure and connected to an emergency tank system, as defined in subdivision (c) of Section 25281.5, is exempt from the requirements of this chapter if all of the following conditions are met:

(1) The tank is situated above the surface of the floor in such a way that all of the surfaces of the tank can be visually inspected by either direct viewing, through the use of visual aids, including, but not limited to, mirrors, cameras, or video equipment, or monitored through the use of a continuous leak detection and alarm system capable of detecting unauthorized releases of hazardous substances.

(2) For a single-walled tank, in addition to all the other requirements in this section, the structure, or a separate discrete secondary structure able to contain the entire contents of the liquid stored in the tank, is sealed with a material compatible with the stored product.

(3) The owner or operator of the tank conducts a visual inspection of the tank each time the emergency tank system is operated, or at least once a month, and maintains a log of inspection dates for review by the local agency.

(4) The tank or combination of tanks in the below-grade structure has a cumulative capacity of less than 1,320 gallons of diesel fuel.

(b) Nothing in this section excludes an emergency tank system from other applicable laws, codes, and regulations.

(c) The exclusion provided by this section does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of underground storage tanks contained in below-grade structures that are connected to emergency tank systems.

SEC. 9. Section 25284.1 of the Health and Safety Code is amended to read:

25284.1. (a) The board shall take all of the following actions with regard to the prevention of unauthorized releases from petroleum underground storage tanks:

(1) On or before June 1, 2000, initiate a field-based research program to quantify the probability and environmental significance of releases from underground storage tank systems meeting the 1998 upgrade requirements specified in Section 25284, as that section read on January 1, 2002. The research program shall do all of the following:

(A) Seek to identify the source and causes of releases and any deficiencies in leak detection systems.

(B) Include single-walled, double-walled, and hybrid tank systems, and avoid bias towards known leaking underground storage tank systems by including a statistically valid sample of all operating underground storage tank systems.

(C) Include peer review.

(2) Complete the research program on or before June 1, 2002.

(3) Use the results of the research program to develop appropriate changes in design, construction, monitoring, operation, and maintenance requirements for tank systems.

(4) On or before January 1, 2001, adopt regulations to do all of the following:

(A) (i) Require underground storage tank owners, operators, service technicians, installers, and inspectors to meet minimum industry established training standards and require tank facilities to be operated in a manner consistent with industry established best management practices.

(ii) The board shall implement an outreach effort to educate small business owners or operators on the importance of the regulations adopted pursuant to this subparagraph.

(B) (i) Except as provided in clauses (ii) and (iii), require testing of the secondary containment components, including under-dispenser and pump turbine containment components, upon initial installation of a secondary containment component and periodically thereafter, to ensure that the system is capable of containing a release from the primary containment until the

release is detected and cleaned up. The board shall consult with the petroleum industry and local governments to assess the appropriate test or tests that would comply with this subparagraph.

(ii) Secondary containment components that are part of an emergency tank system may be tested using enhanced leak detection, if the test is performed at the frequency specified by the board for testing of secondary containment pursuant to Section 2644.1 of Title 23 of the California Code of Regulations. If the results of the enhanced leak detection test indicate that any component of the emergency tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

(iii) Any tank or piping that is part of an emergency tank system and located within a structure as described in paragraph (2) of subdivision (a) of Section 25283.5 is exempt from the secondary containment testing required by clause (i) if the owner or operator conducts a visual inspection of the tank or piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. This clause does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied tanks that are part of an emergency tank system.

(C) Require annual testing of release detection sensors and alarms, including under-dispenser and pump turbine containment sensors and alarms. The board shall consult with the petroleum industry and local governments to assess the appropriate test or tests that would comply with this subparagraph.

(5) (A) Require an owner or operator of an underground storage tank installed after July 1, 1987, if a tank is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, to have the underground storage tank system fitted, on or before July 1, 2001, with under-dispenser containment or a spill containment or control system that is approved by the board as capable of containing any accidental release.

(B) Require all underground storage tanks installed after January 1, 2000, to have the tank system fitted with under-dispenser containment or a spill containment or control system to meet the requirements of subparagraph (A).

(C) Require an owner or operator of an underground storage tank that is not otherwise subject to subparagraph (A), and not subject to subparagraph (B), to have the underground storage tank system fitted to meet the requirements of subparagraph (A), on or before December 31, 2003.

(D) On and after January 1, 2002, no person shall install, repair, maintain, or calibrate monitoring equipment for an underground storage tank unless that person satisfies both of the following requirements:

(i) The person has fulfilled training standards identified by the board in regulations adopted pursuant to this section.

(ii) The person possesses a tank testing license issued by the board pursuant to Section 25284.4, or a Class “A” General Engineering Contractor License, C-10 Electrical Contractor License, C-34 Pipeline Contractor License, C-36 Plumbing Contractor License, or C-61 (D-40) Limited Specialty Service Station Equipment and Maintenance Contractor License issued by the Contractors State License Board.

(E) Loans and grants for the installation of under-dispenser containment or a spill containment or control system shall be made available pursuant to Chapter 6.76 (commencing with Section 25299.100).

(6) Convene a panel of local agency and regional board representatives to review existing enforcement authority and procedures and to advise the board of any changes that are needed to enable local agencies to take adequate enforcement action against owners and operators of noncompliant underground storage tank facilities. The panel shall make its recommendations to the board on or before September 30, 2001. Based on the recommendations of the panel, the board shall also establish effective enforcement procedures in cases involving fraud.

(b) On or before July 1, 2001, the Contractors State License Board, in consultation with the board, the petroleum industry, air pollution control districts, air quality management districts, and local governments, shall review its requirements for petroleum underground storage tank system installation and removal contractors and make changes, where appropriate, to ensure these contractors are qualified.

SEC. 10. Section 25404.1.1 of the Health and Safety Code is amended to read:

25404.1.1. (a) If a unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with any of the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25515.2.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Chapter 6.67 (commencing with Section 25270), the violator shall be liable for a penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, the violator may be liable for a penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues.

(6) If the order is for a violation of this chapter, the violator shall be liable for a civil or administrative penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues.

(b) In establishing a penalty amount and ordering that a violation be corrected pursuant to this section, a UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that imposing the penalty would have on both the violator and the regulated community.

(c) An order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If a UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) A person served with an order pursuant to this section who has been unable to resolve a violation with a UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by a UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed, but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA, may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) A hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) A provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance of the order by a UPA if the UPA finds that the violation or violations associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with

the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A hearing decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) A unified program facility shall pay a permit fee established by the UPA and any fine or penalty associated with the permit.

(2) A unified program agency may withhold, suspend, or revoke any unified program facility permit, or an element of a unified program facility permit as outlined, for all of the following reasons:

(A) Failing to pay a permit fee.

(B) Failing to pay a fine or penalty associated with a permit.

(C) Failing to comply with an order or written notice issued pursuant to subparagraph (A) of paragraph (1) of subdivision (e) of Section 25510.

(3) (A) If a unified program facility does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date provided in the notice, the UPA may withhold issuance of, suspend, or revoke the permit or permit element.

(B) If the unified program facility does not have a valid unified program facility permit or if the permit or permit element is suspended or revoked, the unified program facility shall immediately discontinue operating the facility, as applicable, or function of the facility to which the permit or permit element applies until the UPA issues, reinstates, or reissues the permit or permit element.

(C) Subparagraph (B) does not apply to the owner or operator of a facility who submits a timely application for a unified program facility permit, or for a renewal of a permit, and the facility is in compliance with the requirements of this chapter, but has not yet received the permit or renewed permit from the UPA. A submittal of facility information to the California Environmental Protection Agency's California Environmental Reporting System (CERS) constitutes a submittal of a unified program facility permit or permit renewal application for purposes of this subparagraph.

(D) Subparagraphs (A) and (B) do not apply to the United States Department of Defense or the United States Coast Guard only if nonpayment of the permit fee or fine or penalty associated with the permit is due to payment delays due to federal appropriations or federal payment process issues and the required payment will happen once the federal payment delay issue is resolved.

(4) A unified program facility may request a hearing to appeal the withholding of the issuance of, or the suspension or revocation of, a permit or permit element pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(l) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

SEC. 11. Section 25505 of the Health and Safety Code is amended to read:

25505. (a) A business plan shall contain all of the following information:

(1) The inventory of information required by this article and additional information the governing body of the unified program agency finds necessary to protect the health and safety of persons, property, or the environment. Locally required information shall be adopted by local ordinance and shall be subject to the trade secret protection specified in Section 25512. The unified program agency shall notify the secretary within 30 days after those requirements are adopted.

(2) A site map that contains north orientation, adjacent streets, access and exit points, evacuation staging areas, hazardous material handling and storage areas, emergency response equipment, and, if present, loading areas, internal roads, storm and sewer drains, and emergency shutoffs, as well as additional map requirements the governing body of the unified program agency finds necessary. Any locally required additional map requirements shall be adopted by local ordinance. This ordinance and related public processes are subject to the limitations on the disclosure of hazardous material location information specified in subdivision (b) of Section 25509. The unified program agency shall notify the secretary both before publishing a proposed ordinance to require additional map requirements and within 30 days after those requirements are adopted. A site map shall be updated to include the additional information required pursuant to the local ordinance no later than one year after the adoption of the local ordinance.

(3) Emergency response plans and procedures in the event of a release or threatened release of a hazardous material, including, but not limited to, all of the following:

(A) Immediate notification contacts to the appropriate local emergency response personnel and to the unified program agency.

(B) Procedures to mitigate a release or threatened release to minimize any potential harm or damage to persons, property, or the environment.

(C) Evacuation plans and procedures, including immediate notice, for the business site.

(4) Training for all new employees and annual training, including refresher courses, for all employees in safety procedures in the event of a release or threatened release of a hazardous material, including, but not limited to, familiarity with the plans and procedures specified in paragraph (3). These training programs may take into consideration the position of each employee. This training shall be documented electronically or by hard copy and shall be made available for a minimum of three years.

(b) A business required to file a pipeline operations contingency plan in accordance with the Elder California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code) and the regulations of the Department of Transportation, found in Part 195 (commencing with Section 195.0) of Subchapter D of Chapter I of Subtitle B of Title 49 of the Code of Federal Regulations, may file a copy of those plans with the unified program agency instead of filing an emergency response plan specified in paragraph (3) of subdivision (a).

(c) The emergency response plans and procedures, the inventory of information required by this article, and the site map required by this section shall be readily available to personnel of the business or the unified program facility with responsibilities for emergency response or training pursuant to this section.

SEC. 12. Section 25507 of the Health and Safety Code is amended to read:

25507. (a) Except as provided in this article, a business shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503 if the business meets any of the following conditions at any unified program facility:

(1) (A) It handles a hazardous material or a mixture containing a hazardous material that has a quantity at any one time during the reporting year that is equal to, or greater than, 55 gallons for materials that are liquids, 500 pounds for solids, or 200 cubic feet for compressed gas. The physical state and quantity present of mixtures shall be determined by the physical state of the mixture as a whole, not individual components, at standard temperature and pressure.

(B) For the purpose of this section, for compressed gases, if a hazardous material or mixture is determined to exceed threshold quantities at standard temperature and pressure, it shall be reported in the physical state at which it is stored. If the material is an extremely hazardous substance, as defined in Section 355.61 of Title 40 of the Code of Federal Regulations, all amounts shall be reported in pounds.

(2) It is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code.

(3) It handles at any one time during the reporting year an amount of a hazardous material that is equal to, or greater than, the threshold planning quantity, under both of the following conditions:

(A) The hazardous material is an extremely hazardous substance, as defined in Section 355.61 of Title 40 of the Code of Federal Regulations.

(B) The threshold planning quantity for that extremely hazardous substance listed in Appendices A and B of Part 355 (commencing with Section 355.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations is less than 500 pounds.

(4) (A) It handles at any one time during the reporting year a total weight of 5,000 pounds for solids or a total volume of 550 gallons for liquids, if the hazardous material is a solid or liquid substance that is classified as a hazard for purposes of Section 5194 of Title 8 of the California Code of Regulations solely as an irritant or sensitizer, except as provided in subparagraph (B).

(B) If the hazardous material handled by the facility is a paint that will be recycled or otherwise managed under an architectural paint recovery program approved by the Department of Resources Recycling and Recovery pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code, the business is required to establish and implement a business plan only if the business handles at any one time during the reporting year a total weight of 10,000 pounds of solid hazardous materials or a total volume of 1,000 gallons of liquid hazardous materials.

(5) It handles at any one time during the reporting year cryogenic, refrigerated, or compressed gas in a quantity of 1,000 cubic feet or more at standard temperature and pressure, if the gas is any of the following:

(A) Classified as a hazard for the purposes of Section 5194 of Title 8 of the California Code of Regulations only for hazards due to simple asphyxiation or the release of pressure.

(B) Oxygen, nitrogen, or nitrous oxide ordinarily maintained by a physician, dentist, podiatrist, veterinarian, pharmacist, or emergency medical service provider at their place of business.

(C) Carbon dioxide or carbon dioxide mixed with simple asphyxiation gases that are classified as a hazard for purposes of Section 5194 of Title 8 of the California Code of Regulations.

(D) A nonflammable refrigerant gas, as defined in the California Fire Code, that is used in a refrigeration system.

(E) A gas that is used in a closed fire suppression system.

(6) It handles a radioactive material at any one time during the reporting year in quantities for which an emergency plan is required to be considered pursuant to Schedule C (Section 30.72) of Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1) of Chapter I of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with these federal regulations.

(7) It handles perchlorate material, as defined in subdivision (c) of Section 25210.5, in a quantity at any one time during the reporting year that is equal to, or greater than, the thresholds listed in paragraph (1).

(8) (A) It handles a combustible metal or metal alloy that is defined as a pyrophoric or water-reactive material in the California Fire Code, in any quantity in raw stock, scrap, or powder form at any time during the reporting year.

(B) It handles a combustible metal or metal alloy that is defined as a combustible dust, flammable solid, or magnesium in the California Fire Code, in a quantity in raw stock, scrap, or powder form at any one time during the reporting year that is equal to, or greater than, 100 pounds.

(C) It handles a combustible metal or metal alloy that poses an explosive potential, when in molten form, in a quantity at any one time during the reporting year that is equal to, or greater than, 500 pounds.

(b) The following hazardous materials are exempt from the requirements of this section:

(1) Refrigerant gases, other than ammonia or flammable gas in a closed cooling system, that are used for comfort cooling for occupancies or space cooling for computer rooms.

(2) Compressed air in cylinders, bottles, and tanks used by fire departments and other emergency response organizations for the purpose of emergency response and safety.

(3) (A) Lubricating oil, if the total volume of each type of lubricating oil handled at a facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons at any one time.

(B) For purposes of this paragraph, “lubricating oil” means oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. “Lubricating oil” does not include used oil, as defined in subdivision (a) of Section 25250.1.

(4) Both of the following, if the aggregate storage capacity of oil at the facility is less than 1,320 gallons and a spill prevention control and countermeasure plan is not required pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations:

(A) Fluid in a hydraulic system.

(B) Oil-filled electrical equipment that is not contiguous to an electric facility.

(5) (A) A hazardous material that meets the definition of a consumer product and is handled at, and found in, a retail establishment and intended for direct sale to the end user.

(B) The exemption provided for in subparagraph (A) shall not apply to either of the following:

(i) A consumer product handled at a facility that manufactures that product, or a separate warehouse or distribution center where there are no direct sales to consumers, or where a product is dispensed on the retail premises.

(ii) A consumer product sold at a retail establishment that has a National Fire Protection Association or “NFPA” or Hazardous Materials Identification System or “HMIS” rating of 3 or 4 and is stored, at any time, in quantities equal to, or greater than, 165 gallons for a liquid, 600 cubic feet for a gas, and 1,500 pounds for a solid. If a unified program agency determines that a consumer product stored at a retail establishment is stored at or above a reportable threshold listed in subdivision (a), and poses a significant potential hazard, the unified program agency may require the product to be reported in accordance with this chapter.

(6) Propane that is for on-premises use, storage, or both, in an amount not to exceed 500 gallons, that is for the sole purpose of cooking, heating employee work areas, and heating water within that facility, unless the unified program agency finds, and provides notice to the business handling the propane, that the handling of the on-premises propane requires the submission of a business plan, or any portion of a business plan, in response to public health, safety, or environmental concerns.

(7) Liquid or gaseous fuel in fuel tanks on vehicles or motorized equipment. For purposes of this section, the fuel tank shall be integral to the operation of the vehicle or motorized equipment.

(8) Treated wood and treated wood waste, unless the requirement that the facility submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code applies. For the purposes of this section, the definition of “treated wood” set forth in subdivision (c) of Section 25230.1 applies. For the purposes of this section, the definition of “treated wood waste” set forth in subdivision (d) of Section 25230.1 applies. Treated wood or treated wood waste that would otherwise be subject to the requirements of this section pursuant to subparagraph (B) of paragraph 5, is exempt if it satisfies the requirements of this paragraph.

(c) In addition to the authority specified in subdivision (e), the governing body of the unified program agency may, in exceptional circumstances, following notice and public hearing, exempt from Section 25506 a hazardous material, as defined in subdivision (n) of Section 25501, if the unified program agency finds that the hazardous material would not pose a present or potential danger to the environment or to human health and safety if the hazardous material was released into the environment. The unified program agency shall send a notice to the secretary within 15 days from the effective date of any exemption granted pursuant to this subdivision.

(d) A unified program agency, upon application by a handler, may exempt the handler, under conditions that the unified program agency determines to be proper, from any portion of the requirements to establish and maintain a business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment, or affect the ability of the unified program agency and emergency response personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The unified program agency shall specify in writing the basis for any exemption under this subdivision.

(e) A unified program agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this article upon proof that the material does not pose a significant present or potential hazard to human health or safety or to the environment if released into the workplace or environment. The unified program agency shall specify in writing the basis for any exemption under this subdivision.

(f) A unified program agency shall adopt procedures to provide for public input when approving applications submitted pursuant to subdivisions (d) and (e).

SEC. 13. Section 25534 of the Health and Safety Code is amended to read:

25534. (a) For any stationary source with one or more covered processes, the unified program agency may make a determination as to whether there is a significant likelihood that the use of regulated substances by a stationary source may pose a regulated

substances accident risk.

(b) (1) (A) If the unified program agency determines that there is a significant likelihood of a regulated substances accident risk pursuant to this subdivision, it may reclassify the covered process from program 2 to program 3, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

(B) If the unified program agency reclassifies a covered process to a higher program level, the stationary source shall comply with all of the requirements applicable to the higher program level within 12 months of being notified by the unified program agency of the reclassification.

(2) If the unified program agency determines that there is not a significant likelihood of a regulated substances accident risk pursuant to this subdivision, it may do either of the following:

(A) (i) Exempt the stationary source from this article.

(ii) The unified program agency may revoke the exemption provided pursuant to this subparagraph at any time if the unified program agency determines there is a likelihood of a regulated substances accident risk.

(iii) If the unified program agency revokes the exemption provided pursuant to this subparagraph, the stationary source shall comply with all applicable requirements of this article and Chapter 4.5 (commencing with Section 2735.1) of Division 2 of Title 19 of the California Code of Regulations within 12 months.

(B) Reclassify a covered process from program 3 to program 2 or from program 2 to program 1, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, unless the classification of the covered process is specified in those regulations.

(3) If the unified program agency determines that a pesticide, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a regulated substances accident risk pursuant to this article, the unified program agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate the reasonable likelihood that the use of the pesticide by a farm or nursery may pose a regulated substances accident risk. This paragraph does not limit the authority of a unified program agency to conduct its duties under this article, or prohibit the exercise of that authority.

(c) The requirements of this section apply to a stationary source that is not otherwise required to submit an RMP pursuant to Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

SEC. 14. Section 25536 of the Health and Safety Code is amended to read:

25536. (a) A person or a stationary source with one or more covered processes shall comply with the requirements of this article no later than the latest date specified in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A stationary source with one or more covered processes shall comply with this article and shall submit an RMP to the unified program agency before the date on which the regulated substance is first present in a process above the listed threshold quantity, as listed in Section 2770.5 of Title 19 of the California Code of Regulations, except as provided in Section 25534.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.